

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOE GREENE,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

Case No. RED-98-0063

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

**1.1 Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held on July 20, 2000, in the Hearing Conference Room at Western State Hospital in Steilacoom, Washington.

**1.2 Appearances.** Appellant did not appear and no representative appeared on his behalf. Respondent Department of Social and Health Services was represented by Colin E. Jackson, Assistant Attorney General.

**1.3 Nature of Appeal.** This is an appeal from a disciplinary sanction of a one-month, four-step reduction in salary for neglect of duty, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Respondent alleged that Appellant did not report for work as scheduled and did not call his supervisor to report his absence.

**1.4 Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v.

1 Dep't of Social and Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf,  
2 PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053  
3 (1994).

## 4 **II. FINDINGS OF FACT**

5 2.1 Appellant Joe Greene was a Mental Health Technician 1 and a permanent employee for  
6 Respondent Department of Social and Health Services at Western State Hospital (WSH). Appellant  
7 and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated  
8 thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals  
9 Board on December 29, 1998.

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11 2.2 By letter dated November 13, 1998, Respondent notified Appellant of his four-step  
12 reduction in salary effective December 1, 1998 and continuing through December 31, 1998, for  
13 neglect of duty, gross misconduct and willful violation of published employing agency or  
14 department of personnel rules or regulations. Respondent alleged that on July 9, 1998, Appellant  
15 did not report to work at the beginning of his night shift, and he did not call his supervisor to report  
16 his absence.

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18 2.3 Appellant worked with the team that was responsible for providing a safe, therapeutic  
19 environment for patients on Ward W2 of the Program for Adaptive Living Skills (PALS).

20 2.4 Prior to the incident giving rise to this appeal, Appellant had failed to report to work and  
21 failed to call in his absences on April 30, 1998, June 11, 1998 and June 22, 1998. Appellant's  
22 supervisor had counseled him about his incidents of "no call/no show."

23  
24 2.5 Appellant was aware of Respondent's policies and procedures for reporting absences. In  
25 addition, he was aware of the expectation that he report to work on time and work his full shift.

1 2.6 There is no dispute that on July 9, 1998, Appellant failed to report to work and failed to call  
2 in to report his absence.

3 2.7 On July 14, 1998, Appellant's supervisor initiated a Personnel Conduct Report (PCR)  
4 against Appellant for his failure to report to work and to call in on July 9, 1998. During the  
5 administrative hearing on the PCR, Appellant admitted that he failed to call or report to work as  
6 scheduled. The PCR resulted in a determination that Appellant's actions constituted misconduct.  
7

8 2.8 Appellant's failure to report to work left Ward W2 short staffed on the night shift.  
9 Appellant's absence placed staff at a disadvantage by having to provide coverage for him. In  
10 addition, Appellant's absence put the safety of staff and patients at risk because there were fewer  
11 staff to deal with the patients' emergent needs.

12 2.9 Dr. Jerry L. Dennis was the Chief Executive Officer of WSH. Prior to determining the  
13 appropriate level of discipline, Dr. Dennis reviewed the PCR report and Appellant's personnel file.  
14 Because Appellant had no prior disciplinary history, Dr. Dennis determined that a one-month, four-  
15 step reduction in salary was the appropriate sanction.  
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### 17 **III. ARGUMENTS OF THE PARTIES**

18 3.1 Respondent argues that Appellant neglected his duty to report to work as scheduled and  
19 failed to follow call-in procedures. Respondent contends that Appellant was aware of agency  
20 policies and procedures and that he failed to abide by them. Respondent further contends that  
21 Appellant's actions resulted in understaffing which adversely impacted his co-workers, placed the  
22 safety of the staff and patients at WSH at risk and rose to the level of gross misconduct.  
23 Respondent asserts that the disciplinary sanction of a reduction in salary was appropriate and the  
24 appeal should be denied.  
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1 3.2 Appellant did not provide a defense to the charges nor did he dispute the appropriateness of  
2 the disciplinary sanction before the Board.

#### 3 4 **IV. CONCLUSIONS OF LAW**

5 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
6 herein.

7 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
8 the charges upon which the action was initiated by proving by a preponderance of the credible  
9 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
10 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
11 Corrections, PAB No. D82-084 (1983).

12 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
13 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
14 of Social & Health Services, PAB No. D86-119 (1987).

15 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
16 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

17 4.5 Willful violation of published employing agency or institution or Personnel Resources  
18 Board rules or regulations is established by facts showing the existence and publication of the rules  
19 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
20 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &  
21 Health Services, PAB No. D93-053 (1994).

22 4.6 Respondent has met its burden of proving that Appellant neglected his duty and willfully  
23 violated agency policies and procedures when he failed to report to work and failed to abide by  
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1 department policy for calling in absences. Furthermore, Respondent has met its burden of proving  
2 that Appellant's actions adversely affected the agency's ability to provide care for the PALS  
3 patients on Ward W2, placed the safety of staff and patients at risk, and rose to the level of gross  
4 misconduct.

5 4.7 Respondent has proven the charges in the disciplinary letter. Under the proven facts and  
6 circumstances, a four-step, one-month reduction in salary is appropriate and the appeal should be  
7 denied.  
8

9 **V. ORDER**

10 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Joe Greene is denied.

11 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.  
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13 WASHINGTON STATE PERSONNEL APPEALS BOARD

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